

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NATHEN BARTON,
Plaintiff,

v.

AMERICAN PROTECTION PLANS, LLC,
Defendant.

Case No.

DEFENDANT’S NOTICE OF REMOVAL
OF ACTION PURSUANT TO 28 U.S.C.
§§ 1441 AND 1446

Defendant American Protection Plans, LLC, (“Defendant”), hereby gives notice of its removal of this action captioned *Barton v. American Protection Plans, LLC*, Case No. 21-2-01264-06, filed in the Superior Court of the State of Washington in the County of Clark, to the United States District Court for the Western District of Washington pursuant to 28 U.S.C. §§ 1441 and 1446.

In support of this Notice of Removal, Defendant states as follows:

1. On July 8, 2021, Plaintiff Nathen Barton filed an action against Defendant titled *Barton v. American Protection Plans, LLC* in Clark County Superior Court (“State Court Action”)

2. Pursuant to 28 U.S.C. § 1446(a), a complete copy of all process, pleadings, and orders served upon Defendant in the State Court Action is attached hereto as **Exhibit A**.

3. Defendant was served or otherwise received notice of the State Court Action on

DEFENDANT’S NOTICE OF REMOVAL
(Case No. _____) – 1

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August 24, 2021.

4. In the State Court Action, Plaintiff alleges claims under federal law, specifically, the Telephone Consumer Protection Act. (*See* Complaint in the State Court Action, p. 4, ¶¶ 10-12; p. 5 (seeking treble damages and injunctive relief pursuant to the TCPA).)

5. A defendant may remove a state court action if the plaintiff could have originally filed the action in federal court. *See Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987); *Duncan v. Stuetzle*, 76 F.3d 1480, 1485 (9th Cir. 1996).

6. Federal question jurisdiction exists here because the State Court Action on its face alleges a cause of action under the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA”). *See Linlor v. Five9, Inc.*, No. 17CV218-MMA (BLM), 2017 U.S. Dist. LEXIS 22542, at *3 (S.D. Cal. Feb. 15, 2017) (determining that court “has federal question jurisdiction over th[e] action because [p]laintiff alleges violations of the TCPA, a federal statute”).

7. Given that the State Court Action is pending in Clark County Superior Court, venue for removal based on the allegations in the State Court Action exists in the United States District Court for the Western District of Washington in Tacoma. *See* 28 U.S.C. § 1441(a) (state court actions may be removed “to the district court of the United States for the district and division embracing the place where such action is pending”).

8. The Notice of Removal is timely because it was filed within 30 days of receipt by Defendant of a copy of the initial pleading in the State Court Action.

9. As required by 28 U.S.C. § 1446(d), a notice of filing of removal, with a copy of this Notice of Removal, will be filed in the State Court Action and served on Plaintiff or Plaintiff’s counsel promptly after this Notice of Removal is filed.

10. By filing this Notice of Removal, Defendant does not waive any defenses which may be available to it, including but not limited to lack of personal jurisdiction, insufficiency of service of process, forum non conveniens, failure to state a claim upon which relief can be granted, and any other defenses.

11. Based on the foregoing, Defendant hereby removes the State Court Action to this

1 Court pursuant to 28 U.S.C. §§ 1441, 1446.

2 Dated this 13th day of September 2021.

Respectfully submitted,

3 FOCAL PLLC

4 By: s/ Venkat Balasubramani
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11 Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2021, I caused the foregoing Defendant's Notice of Removal to be filed via the Court's ECF system and to be sent to Plaintiff via email and U.S.

Mail (postage paid):

Nathen Barton
4618 NW 11th Cir.
Camas, WA 98607
farmersbranch2014@gmail.com

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

DATED: September 13, 2021.

s/ Venkat Balasubramani

Venkat Balasubramani, WSBA # 28269